If it intrusts that duty to another company, and a passenger is injured, it is liable. It assumes also to operate its road with such degree of skill and care that the lives of those who have the right to pass on or near its tracks will not be jeopardized. Should the lessee inflict injuries upon wayfarers who cross its road, the lessor is liable. But the duty which a railroad company owes to its servant does not arise from the fact that the servant is one of the general public, but from the contract of service. If, therefore, the servant of a lessee is injured he must look to the lessee for redress and not to the lessor, who can be held liable in such a case upon no principle of justice.

When recovery has been allowed against the lessor upon grounds of public policy, it has been under circumstances wholly different from those in the Illinois case. As indicated in the dissenting opinion, it has been because public policy demands that so far as the general public is concerned, a corporation should be held responsible for the proper exercise of the powers granted; or, because the corporation would be enabled to place the operation of its road in the hands of irresponsible parties, were their liability denied; or, because an injured party might be seriously hindered in obtaining his redress through ignorance as to what corporation to sue. The dissenting opinion shows clearly that none of these reasons apply to the servant of a lessee company. The servant needs no protection as one of the general public because he can enter the service or not as he chooses. He is not required to enter the service of an irresponsible company. If he is injured he certainly knows which company to sue.

It is noteworthy that three justices concur in the dissenting opinion, one of marked learning and ability, and apparently much more in line with the trend of decision on the subject of the liability of lessor railroad companies than that of the majority.

QUO WARRANTO: THE EXTENT OF THE JURISDICTION OF AN APPELLATE COURT TO ISSUE AN INJUNCTION.

In a recent opinion, in the case of *State ex. rel. Ellis, Atty. General v. Board of Deputy State Supervisors of Cuyahoga County*, handed down by the Supreme Court of Ohio, a very interesting question arose, which may be stated as follows: Can a Court having appellate jurisdiction only, except for *quo warranto*, *mandamus*, prohibition, and *habeas corpus*, for which it has original jurisdiction, while hearing *quo warranto* proceedings, issue an injunction against one of the parties to the proceeding? The facts as found in the Ohio case were these: On April 23, 1904, a new law went into effect changing the method of appointing judges of election. The effect of the law was to abolish the old board and establish a new one. The old board questioned the constitutionality of the new law and refused to give up the office. Proceedings in *quo warranto* were instituted to try the

title to the office. Pending the decision upon the merits of the case an election was to be held. The point in the above proposition was raised by the attorney general on motion for an injunction compelling the old board to deliver to the new board the ballot boxes and other property of the office.

From an examination of the authorities one would seem justified in laying down the following general propositions as well established: First, that an information in the nature of *quo warranto* is the proper remedy to try the title to office, when such title is in question. Second, that *quo warranto* is the proper remedy to test the constitutionality of the law under which an officer is elected. *Hinze v. People*, 92 Ill. 406; *People v. Ruordan*, 73 Mich. 508.

The case under discussion is a little outside of the application of either of the above rules. It raises the question of title to office and of the constitutionality of the law under which that title is claimed, but both questions in this case grow out of the question whether one office has been abolished and another created. In *State, Worthey, Prosecutor, v. Steen, Mayor*, 43 N. J. L. 542, the rule is laid down that where an office has been abolished, the proper remedy to compel one claiming to exercise the office by virtue of a previous right to desist from such exercise, is by *quo warranto*. It would appear from the above propositions that there could be no question as to the correctness of the proceeding until a motion for an injunction was introduced. The decision on the motion in the Ohio court turned entirely upon the interpretation of sections 5572 ind 5573 of the Revised Statutes of Ohio. *Yeoman v. Lesley*, 36 Ohio St. 416, bears out the decision in this case, that the court under Sections 5572–73 has jurisdiction to issue the injunction. So, also, does *Wagner v. Railway Co.*, 38 Ohio 32. But what of the jurisdiction of a court which is not supported by statute, to issue the injunction? *Kent v. Mohoffy*, 2 Ohio St. 498, which was decided before the above statutes were enacted, states in the opinion, though the question was not directly before the court, that the court did not have jurisdiction to issue a writ of injunction. In *Pittsburg, Ft. Wayne and Chicago Ry. Co. v. Hurd & Fair*, 17 Ohio St. 144, where the Supreme Court was asked to dissolve an injunction, the rule was laid down that it had no power to dissolve nor to grant an injunction. The trend of the Ohio decisions would seem to be against the right of issuing an injunction unless that power was expressly granted.

Let us compare this right, by way of analogy, with the right of a supreme appellate court to exercise supervisory jurisdiction over inferior courts where such right is not expressly granted. Supervisory power does exist in the highest court of the state, although that court may be restricted by organic and statute law to appellate jurisdiction only, where it is clothed by the same law with the power to issue the writs by means of which the power of "superintendency" is exercised. This proposition is supported by many authorities. *Hyatt v. Allen*, 54 Cal. 353. For

further authorities see 51 L. R. A. 36, note and cases cited, from which we may also draw the conclusion that when clothed by constitution or statute neither with power of superintending control nor with authority to issue the several writs by means of which that power is usually exerted, the supreme appellate court will not assume to exercise it.

But the above proposition is qualified by the following: That courts of purely appellate jurisdiction will issue to the court over which that jurisdiction extends any of the writs, and exercise all the control, essential to compel the subordinate court to act. *Ex parte Bradstreet*, 7 Pet. 634; see 51 L. R. A. 110 f.

From the above propositions, we may draw the conclusion that a court of appellate jurisdiction, though clothed with no supervisory power, will imply that power when it is essential to the carrying out of its appellate jurisdiction. If a court will imply the power to issue the writs of prohibition, *certiorari* or *mandamus*, as the case may require, to aid its appellate jurisdiction, why should it not have the same implied power to issue an injunction in aid of its original jurisdiction when that jurisdiction is expressly granted?

In the absence of any direct adjudication it would seem that the logical conclusion would be that an injunction would issue when it was necessary to preserve intact the subject matter of the litigation, pending the rendition of the decision, though it be a court of appellate jurisdiction only, and one having no express power to issue the writ.